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Candace Havens
Director

MEMORANDUM

Public Hearing Date: July 12, 2011
Land Use Action Date: August 16, 2011
Board of Aldermen Action Date: September 6, 2011
90-Day Expiration Date: September 10, 2011

DATE: July 10, 2011

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development
Eve Tapper, Chief Planner for Current Planning ET
Derek Valentine, Senior Land Use Planner

SUBJECT: Petition #169-11, STEVEN AND ANDREA FEIN for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING STRUCTURE for a garage greater than 700 square feet (approximately 1,110 square feet), extending a structure which is nonconforming with respect to lot coverage and open space at 40 LENOX STREET, Ward 2, West Newton on land known as SBL 32, 50, 2, containing approximately 15,000 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec. 30-24, 30-23, 30-21(b), 30-15(m)(5)(b) and (c) of the City of Newton Rev Zoning Ord, 2007.

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



EXECUTIVE SUMMARY

The subject property consists of a 15,000 square foot lot improved with a 5,185 square foot Victorian home built in 1895, which is on the National Register of Historic Places. The property has an existing 589 square foot detached garage built in 1989. The proposal is for an expansion of this garage to the east of the existing structure. The development on this site is currently nonconforming with respect to maximum requirements for lot coverage and minimum open space. The petitioner is seeking relief to increase both of these nonconformities, as well as to increase the total ground-floor area of the garage to 1110 square feet where 700 square feet are allowed by right, and to construct a garage with four spaces where three parking spaces are allowed by right.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

1. When reviewing this petition, the Board should consider whether the expansion of a structure, which is nonconforming with regard to open space and lot coverage, is not substantially more detrimental to the neighborhood for the following reasons:
 - a. The addition is on the rear of the existing garage and will have a minimal impact on the street view of the residence.
 - b. The proposed garage is accessed by a paver driveway and brick walkways. Although the materials do not allow the driveway to count as open space, they are more pervious than traditional bituminous pavement.
2. A garage with more than 700 square feet of ground floor area with a capacity for more than three cars is appropriate for this location because this area of West Newton Hill features a number of other large late 19th Century homes with larger detached garages.
3. The garage will not adversely affect the neighborhood, since the garage is detached, will have little impact on the National Register Historic structure, and has been approved by the Newton Historical Commission.
4. The proposed structure will not be a nuisance or serious hazard to vehicles or pedestrians and the expansion of the existing garage is preferable to having vehicles parking within the front property line setback

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject site is located in the Single Residence 1 district on West Newton Hill. It is in a neighborhood comprised of large, older homes. The West Newton Hill neighborhood generally features some of the largest parcels in the City; however properties in the immediate vicinity tend to be smaller, averaging around 10,000 square feet of land. Nearly all of the properties in the neighborhood are single-family residences.

Larger garages and carriage houses are not unprecedented in this area of West Newton Hill. Several other properties in the neighborhood have outbuildings of similar or larger size than what the petitioner is proposing. Because of the historic character of this neighborhood, it is not uncommon to see large carriage houses in lieu of attached, multi-car garages. An original detached garage was built on the rear of the property in the early 1900s and was demolished and replaced in 1989 through Section 30-15(i), which allows the construction of a garage in conjunction with a residence built prior to December 27, 1922 without applying a maximum percentage for lot coverage.

B. Site

The site consists of 15,000 square feet of land. It is improved with a three-story Victorian home and an existing detached garage. There is a paver driveway and brick walkways. The site features mature landscaping.

III. PROJECT DESCRIPTION AND ANALYSIS



Existing Garage



Garage with Proposed Addition

A. Land Use

The property will remain as a single-family residential use.

B. Building and Site Design

No changes are proposed to the main house. Under this petition, the garage would be expanded to a total of 1,110 square feet. The garage would have two overhead doors, with two tandem spaces per garage bay. The addition would be located behind the existing garage, when viewed from the street. The ridge would be four feet higher than the existing garage peak.

C. Parking and Circulation

The property currently has parking in the driveway, as well as two spaces within the existing garage. The existing garage is 37' from the front property line, therefore any car parked in a standard 19' parking space in front of the garage will inevitably be within the front setback. Providing more capacity for parking the petitioners' vehicles indoors is preferable to having cars parked within the front setback. This proposal would add two additional parking stalls for a total of four stalls within the expanded garage. It appears as though all of the proposed stalls are compliant with dimensional standards. The parking in the driveway would not change as a result of this petition.

D. Landscape Screening

There is no additional landscaping proposed as part of this petition. The rear yard is surrounded by vegetation that will screen the site of the proposed addition from adjacent properties.

IV. TECHNICAL REVIEW

A. Technical Considerations

The petitioners are proposing an addition to their detached garage, which would bring the total first floor square footage of the garage up to 1,110 square feet. Newton Zoning Ordinances, Section 30-15(m)(5)(c) requires a special permit for any garage that exceeds 700 square feet of ground floor area. The proposed garage would provide parking for four vehicles. A special permit is required for garages with more than three parking spaces. The property is currently nonconforming with respect to lot coverage and required open space, therefore expanding the garage constitutes an extension of a nonconforming structure, which requires a special permit per Section 30-21(b).

The percentage of open space will decrease from 58.6% to 55.2%, where 65% is required. The Zoning Review Memo, dated June 10, 2011 originally indicated that the open space would increase from 41.4% to 44.8%. This was determined to be incorrect after subsequent review and was recalculated by the petitioner. The open space is actually decreasing from 58.6% to 55.2%, increasing a legal

nonconformity. The lot coverage will increase from 24.1% to 27.5%, where 20% is allowed.

The existing garage, which was built in 1989, replaced an earlier garage on the property (since razed). The existing garage was built by right despite the nonconforming lot coverage because Section 30-15(i) allows the construction of a garage in conjunction with a residence built prior to December 27, 1922, without applying a minimum percentage for lot coverage.

B. Newton Historical Commission.

Since the proposed garage is not attached to the primary dwelling, the project underwent staff review and was determined to have no negative impact on the structure, which is on the National Register of Historic Places. The garage is less than 50 years old and is not historically significant.

C. Engineering Review.

The Engineering Department reviews all projects that increase the total amount of impervious coverage by 400 square feet or greater. Since this proposal exceeds this threshold, the Engineering Department has reviewed the petition and recommends the addition of rain barrels for reuse of roof drainage, if feasible.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum ("ATTACHMENT D"), the petitioner is seeking the following reliefs:

- Section 30-15(m)(5)(c) and 30-15(m)(5)(b) to allow a garage with a greater than 700 square foot ground-floor area and parking for more than three cars
- Section 30-21(b) to allow an extension of a structure which is nonconforming with respect to lot coverage and required open space
- Section 30-24 for issuance of a special permit

VI. PETITIONERS' RESPONSIBILITIES

The petition is complete at this time.

ATTACHMENTS:

ATTACHMENT A: VICINITY ZONING MAP

ATTACHMENT B: VICINITY LAND USE MAP

ATTACHMENT C: MAP OF NEIGHBORHOOD DETACHED GARAGES

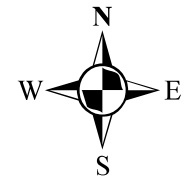
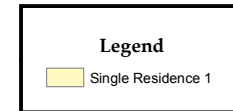
ATTACHMENT D: ZONING REVIEW MEMO

ATTACHMENT E: ENGINEERING DEPARTMENT MEMO

ATTACHMENT F: DRAFT BOARD ORDER #104-11

40 Lenox St. Vicinity Zoning

*City of Newton,
Massachusetts*



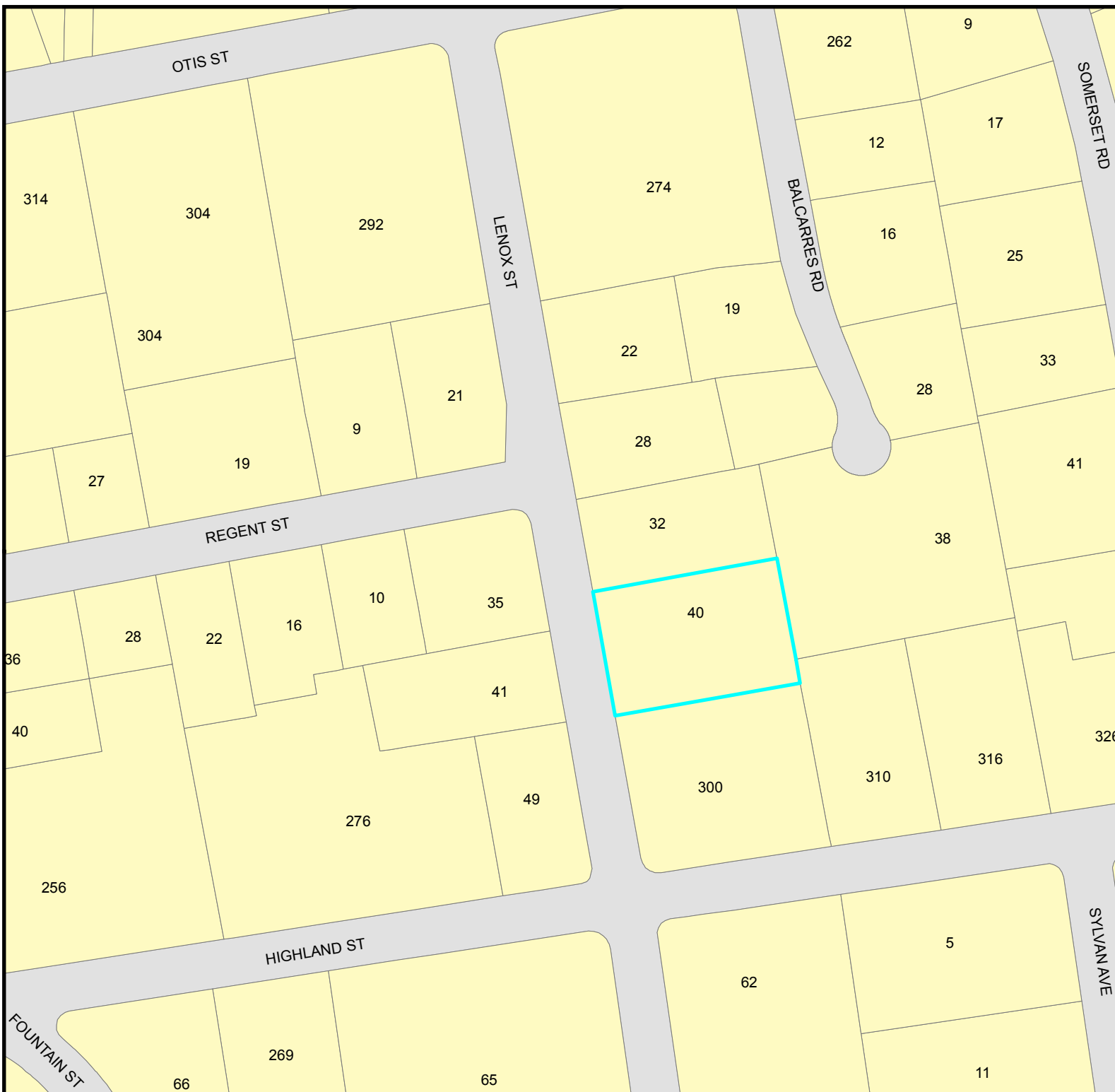
The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield

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Feet

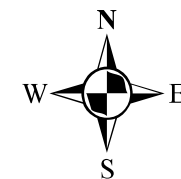
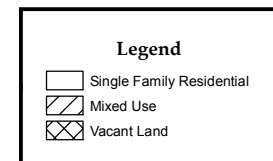
MAP DATE: July 05, 2011

ATTACHMENT A



40 Lenox St. Vicinity Land Use

*City of Newton,
Massachusetts*



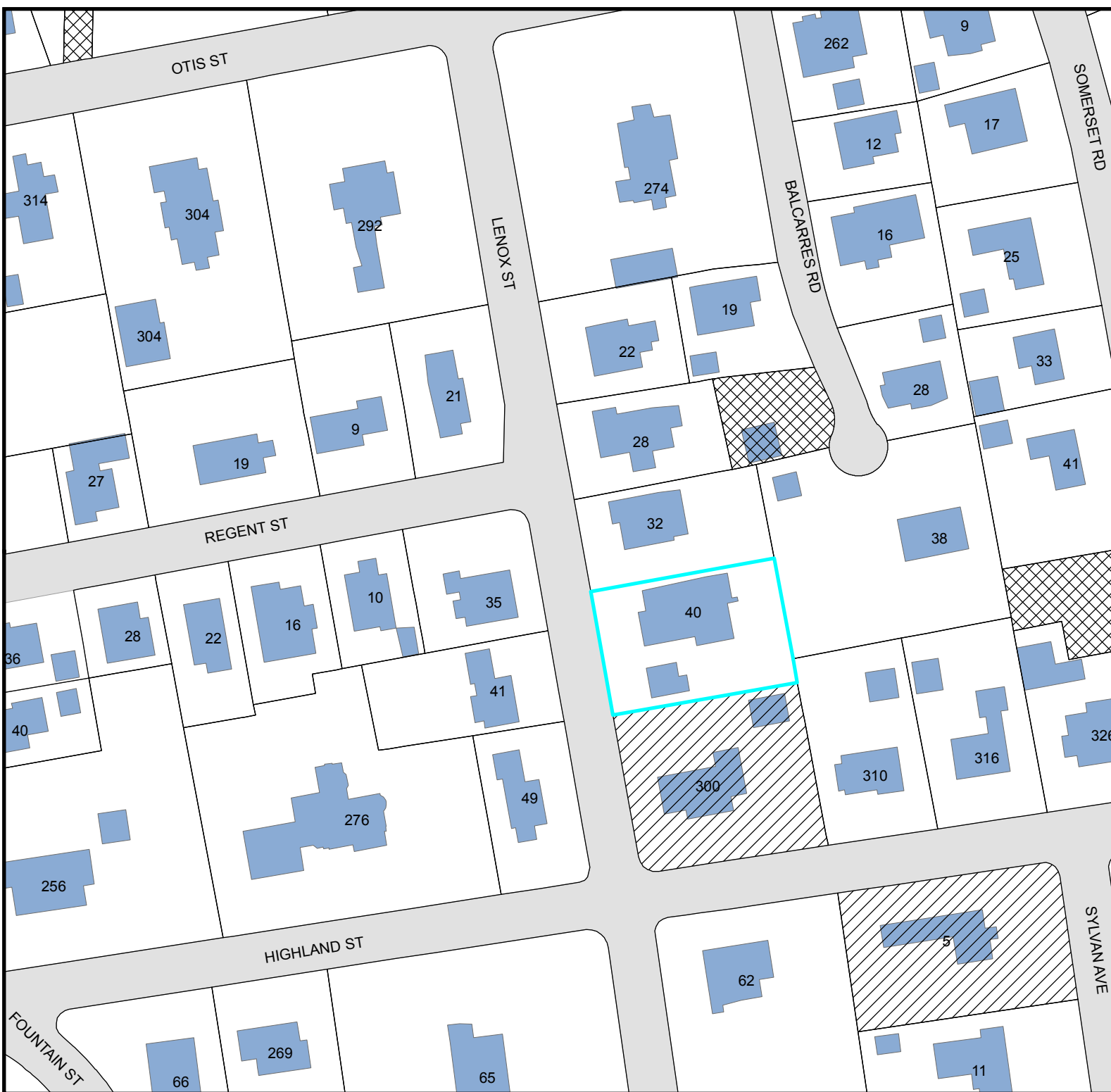
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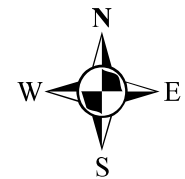
MAP DATE: July 05, 2011

ATTACHMENT B



Detached Garage Square Footage

*City of Newton,
Massachusetts*



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
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0 25 50 75 100 125 150 175 Feet

MAP DATE: July 05, 2011



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Candace Havens
Director

ZONING REVIEW MEMORANDUM

Date: June 10, 2011

To: John Lojek, Commissioner of Inspectional Services

Fr: Seth Zeren, Chief Zoning Code Official
Eve Tapper, Chief Planner for Current Planning ET

Cc: Joe Trainor, contractor representing applicant
Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to allow the expansion of an existing garage to more than 700 square feet of ground floor area and a consequent increase in already nonconforming lot coverage

Applicant: Steve Fein	
Site: 40 Lenox Street	SBL: 32050 0002
Zoning: SR1	Lot Area: 15,000 square feet
Current use: Single-family dwelling	Proposed use: Single-family dwelling with a garage greater than 700 square feet

Background:

The subject property consists of a 15,000 square foot lot currently improved with a single-family house and a detached garage. The house was constructed in 1895. The existing garage was constructed in 1989. The applicant proposes to increase the size of the garage to 1,110 square feet.

The following review is based on plans and materials submitted to date as noted below.

- Architectural plans, by Residential Engineers, Inc. unsigned and unstamped
 - Overview and Garage Framing, dated 10/15/10
 - Plan and Street Views, dated 8/15/10
 - Garage Framing, F-5, dated 2/1/11
- Site plan, signed and stamped by Bradley J. Simonelli, surveyor, dated 4/7/11
- Site plan from building permit for existing garage, signed and stamped by John J. Regan, dated 5/9/89

- Revised site plan, signed and stamped by Bradley J. Simonelli, surveyor, dated 6/6/11

ADMINISTRATIVE DETERMINATIONS:

1. The property is in the SR1 zone and must comply with the dimensional standards of Section 30-15, Table 1 for a pre-1953 lot and Section 30-15(m) for an accessory building (see chart below).

SR1 Zone	Required/Allowed	Existing	Proposed
Lot Size	15,000 square feet	15,000 square feet	No change
Frontage	100 feet	100 feet	No change
Setbacks for Accessory Building <ul style="list-style-type: none"> • Front • Side • Rear 	25 feet 5 feet 5 feet	37 feet 8 feet 64.5 feet	No change No change No change
FAR	.25	Not provided	Does not apply to accessory structures until October 15, 2011
Accessory Building Ground Floor Area	700 square feet	598 square feet	1,111 square feet
Maximum number of cars in garage	3	2	4
Accessory Building Height	18 feet	10.7 feet	15.0 feet
Accessory Building Maximum Stories	1.5	1	No change
Max. Lot Coverage	20%	24.1%	27.5%
Min. Open Space	65%	41.4%	44.8%

2. The applicant has proposed an addition to an existing garage which would increase the total ground floor area of the garage to 1,111 square feet. Section 30-15(m)(5)c) of the Zoning Ordinance allows a garage greater than 700 square feet by special permit only. The applicant must obtain a special permit from the Board of Aldermen to build the addition as proposed.
3. The submitted floor plans for the garage depict parking for four cars (two tandem spaces per garage bay with two garage bays). Section 30-15(m)(5)b) allows a garage with more than three parking spaces by special permit only. The applicant must obtain a special permit from the Board of Aldermen to build the addition as proposed.
4. The property is currently nonconforming with regard to lot coverage (see the table above). The existing garage was built in 1989 and replaced a prior garage elsewhere on the property. At that time, the property had nonconforming lot coverage; however per Section 30-15(i), which allows the construction of a garage in connection with a residence built prior to December 27, 1922 irrespective of the lot coverage requirements of Section 30-15, Table 1, the existing garage was permitted as-of-right without the need for a special permit from the Board of Aldermen to increase the nonconforming lot coverage. The applicant's current proposal will increase the nonconforming lot coverage and does not fall into the Section 30-15(i) exemption. To build the addition as proposed, the applicant must obtain a special permit from the Board of Aldermen per 30-21(b) for an extension of a nonconforming structure.

5. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Structure</i>	<i>Action Required</i>
§30-15(m)(5)c) and 30-15(m)(5)b)	Allow a garage greater than 700 square feet of ground floor area and with capacity for more than three cars	S.P. per §30-24
§30-21(b)	Allow an extension of a structure nonconforming with regard to lot coverage	S.P. per §30-24

**CITY OF NEWTON
ENGINEERING DIVISION**

MEMORANDUM

To: Alderman Ted Hess-Mahan, Land Use Committee Chairman

From: John Daghljan, Associate City Engineer

Re: Special Permit – 40 Lenox Street

Date: July 1, 2011

CC: Lou Taverna, PE City Engineer (via email)
Linda Finucane, Associate City Clerk (via email)
Eve Tapper, Chief Planner (via email)
Derek Valentine, Planner (via email)

In reference to the above site, I have the following comments for a plan entitled:

*Plot Plan of Proposed Garage
Newton, MA
Prepared by: Field Resources Inc.
Dated: March 22, 2011
Revised: April 7, 2011
June 6, 2011*

Executive Summary:

The threshold for drainage improvements requirements is 400 square feet, the proposal exceeds this by 300 square feet; as this is a slight increase the applicant should consider utilizing using rain barrels to capture the excess runoff from the additional impervious area being added.

General:

1. As of January 1, 2009, all trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans*

2. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
3. The applicant will have to apply for Street Opening, Sidewalk Crossing, and Utilities Connecting permits with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
4. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
5. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*
6. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work. *This note must be incorporated onto the site plan.*

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.

ATTACHMENT F

DRAFT
#169-11

CITY OF NEWTON
IN BOARD OF ALDERMEN
July 12, 2011

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following Petition #169-11 for a SPECIAL PERMIT and SITE PLAN APPROVAL to EXTEND a NONCONFORMING STRUCTURE for a garage greater than 700 square feet (approximately 1,110 square feet), extending a structure which is nonconforming with respect to lot coverage and open space at 40 LENOX STREET, Ward 2, West Newton on land known as SBL 32,50, 2, containing approximately 15,000 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec. 30-24, 30-23, 30-21(b), 30-15(m)(5)(b) and (c) of the City of Newton Zoning Ordinance, 2007, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman Alderman Ted Hess-Mahan:

1. When reviewing this petition, the Board should consider whether the expansion of a structure, which is nonconforming with regard to open space and lot coverage, is not substantially more detrimental to the neighborhood for the following reasons:
 - a. The addition, which is on the rear of the existing garage, will have a minimal impact on the street view of the residence.
 - b. The proposed garage is accessed by a paver driveway and brick walkways. Although the materials do not allow the driveway to count as open space, they are more pervious than traditional bituminous pavement and thus, more environmentally friendly.
2. A garage with greater than 700 square feet of ground floor area and capacity for more than three cars is appropriate for this location because this area of West Newton Hill features a number of other large late 19th Century homes with detached garages with a first floor area greater than 700 square feet.

3. The garage will not adversely affect the neighborhood, since the garage is detached, will have little impact on the National Register Historic structure, and has been approved by the Newton Historical Commission.
4. The proposed structure will not be a nuisance or serious hazard to vehicles or pedestrians and the expansion of the existing garage is preferable to having vehicles parking within the front property line setback.

PETITION NUMBER: #169-11

PETITIONER: Steven and Andrea Fein

LOCATION: 40 Lenox Street, Section 32, Block 50, Lot 2 containing approximately 15,000 sq. ft. of land

OWNER: Steven and Andrea Fein

ADDRESS OF OWNER: 40 Lenox Street, Newton, MA

TO BE USED FOR: Detached garage

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: Section 30-15(m)(5)(c) to allow a garage that exceeds 700 square feet of ground floor area and to allow a garage with more than three parking stalls, Section 30-21(b) to allow the expansion of a structure which is nonconforming with respect to lot coverage and open space.

ZONING: Single Residence 1 District

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. "Plot Plan of Proposed Garage Addition at 40 Lenox Street in West Newton, Mass.," dated May 21, 2009 and revised March 22, 2011, with revisions through June 6, 2011, signed and stamped by Bradley J. Simonelli, Professional Land Surveyor.

- b. Architectural drawings as follows “Andrea & Steve Fein, 40 Lenox Road, West Newton, MA,” by Residential Engineers Inc., neither stamped nor signed and dated August 15, 2011:
 - i. “Sheet 6, Garage New Elevations”
 - ii. “Sheet 7, Garage New 3D Views 1”
 - iii. “Sheet 8, Garage New 3D Views 2”
- 2. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - a. recorded a certified copy of this Board Order for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. filed a copy of such recorded Board Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
- 3. No occupancy permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
 - a. filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or engineer certifying compliance with Condition #1.
 - b. submitted to the Department of Inspectional Services, and the Department of Planning and Development a final as-built survey plan in paper and digital format.